IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

: O R D E R :

S.B. Criminal Misc. Petition . No.650/2005.
(Kanhaiya Lal Kumawat Vs. State of Rajasthan & Others)

DATE OF ORDER : November 13, 2006

P R E S E N T

Hon'ble Mr. Justice Gopal Krishan Vyas

Mr. V.K. Mathur for petitioner.
Mr. Ashok Upadhyay, P.P. for the State.
Mr. K.S. Rathore & Mr. Sandeep Mehta for the non-petitioners.

BY THE COURT :

By way of filing this petition under Section 482, Cr.P.C. the petitioner has prayed for quashing FIR No.64/2004, P.S. Hathipol, Udaipur. According to the facts narrated in the petition, the petitioner filed an FIR No.58/2004 with Police Station Dhanmandi, Udaipur allegedly for offences punishable under Sections 467, 468, 471, 406 and 420/34, I.P.C. in which investigation was commenced. As per tNo.170300 of the HDFC Bank, Chetak Circle, Udaipur. It is alleged that Pramod Kumar Chhaparwal, Neeraj Chhaparwal and Dinesh Bansal conspired and represented that they are the power of attorney holders of the khatedari lands of Kamaliya, Maganiya and Tola Ram. They further claimed that the right thus vested in

them to enter into agreement of sale of the khatedari lands of the above three persons and had all the authority to transfer the lands. They claimed that proceedings was initiated in UIT for clearance and, on that basis, the proceedings have been commenced. The petitioner insisted upon transfer of the land and offered the remaining amount of the sale agreement on 15.03.2004 which they refused; and, thereafter, it revealed that another power of attorney in the name of Neeraj Chhaparwal was executed by the aforesaid three khatedars. It is alleged by the petitioner that the entire set of documents alongwith cheque by which the amount was paid by him was filed with the FIR.

It is submitted by the petitioner that when investigation was commenced on his FIR, with a view to obstructing the investigation and bringing pressure upon the petitioner, Pramod Kumar Chhaparwal filed complaint which was forwarded to the Police Station Hathipol, Udaipur by the concerning Magistrate under Section 156(3), Cr.P.C. Upon that complaint, the impugned FIR No.64/2004 has been registered by the Police Station Hathipol, Udaipur. Pramod Kumar Chhaparwal filed the aforesaid complaint against petitioner as well as Secretary, Urban Improvement Trust, Udaipur. The instant petition is directed against that FIR.

Learned counsel for the petitioner vehemently argued that the impugned FIR does not disclose any offence even if the allegations contained therein are

taken at their face value and, therefore, obviously the FIR is aimed at harassing the petitioner to bring pressure upon him and obstructing the investigation commenced upon the FIR filed by the petitioner against the three persons including Pramod Kumar Chhaparwal. He submitted that Pramod Kumar Chhaparwal is a practicing Chartered Accountant and owner of hotel Saheli Palace. It is submitted that the proceedings pending with the Urban Improvement Trust, Udaipur in respect of the aforesaid land is the subject-matter of the criminal proceedings and bald allegation of conspiracy and threatening has been levelled against the petitioner and Secretary, U.I.T., Udaipur. It is contended by learned counsel for the petitioner that when the petitioner was being deprived of his money and he demanded the same, the impugned FIR has been mala fide filed against the petitioner.

In the petition, the petitioner has referred to earlier miscellaneous petition filed by the petitioner against the impugned FIR. The said petition bears S.B. Criminal Misc. Petition No.431/2004. On 17.03.2005, this Court disposed of the above petition with the following observations :

> "By the instant Criminal Misc. Petition under Section 482 Cr.P.C., the petitioner seeks quashing of FIR No.64/2004 dated 14.5.2004 Police Station Hathi Pole, Udaipur. Learned Public Prosecutor has received the case diary and on the basis of the case diary submits that the matter was first investigated by Sub Inspector Chhel Singh and on completion of investigation, concluded that an offence is made out against the petitioner. However,

> thereafter, the investigation was challenged and further investigation was carried out by SHO Jaswant Singh, who on completion of the investigation came to the conclusion that no offence is made out, and therefore, proposed to submit negative final report. Since after investigation police has decided to submit the final report, in the circumstances, therefore, there is no necessity to go into the controversy as to whether the FIR discloses cognizable offence or not. The petitioner is accordingly disposed of."

It is contended by learned counsel for the petitioner that the earlier petition was disposed of on the information given by the Public Prosecutor that police have proposed to file negative final report in respect of the alleged offences and, therefore, the Court did not find it necessary to go into the controversy and the matter was disposed of. It is argued that after passing of the aforesaid order, complainant Pramod Kumar Chhaparwal, without disclosing any fact about the order dated 17.03.2005 passed by this Court, represented before the I.G.P., Udaipur for further investigation and bearing influence in connivance with Dy. S.P., Udaipur again started collecting evidence to implicate the petitioner. It is submitted by learned counsel for the petitioner that, in the circumstances, the petitioner filed contempt petition before this Court, however, during the course of arguments, the petitioner's counsel decided not to press the contempt petition and the same was accordingly dismissed as not pressed observing further that the petitioner wished to file a fresh petition under Section 482, Cr.P.C.

Learned counsel for the petitioner further argued

that in the earlier petition filed by the petitioner he was prevented from arguing the case on merit on account of fact brought to the knowledge of the Court by the Public Prosecutor about filing of negative final report by the police and as such the Court disposed of the matter without entering into the merit of the case. It is contended by the learned counsel that later on, however, the investigation was re-opened at the instance of the complainant and the petitioner has been falsely sought to be implicated in the alleged crime.

On the other hand, learned counsel for the non-petitioner as well as learned Public Prosecutor contended that there is no provision in the Code of Criminal Procedure authorising the High Court to review its judgment passed either in exercise of its appellate or revisional or original criminal jurisdiction. According to learned counsel for the non-petitioner such a power cannot be exercised with the aid or under the cloak of Section 482 and Section 362 of the Code mandates that no Court, when it has signed its judgment or final order disposing of a case shall alter or review the same except to correct a clerical or arithmetical error. He argued that the section is based on an acknowledged principle of law that once a matter is finally disposed of by a Court, the said Court in the absence of a specific statutory provision becomes functus officio and disentitled to entertain a fresh prayer for the same relief unless

the former order of final disposal is set aside by a Court of competent jurisdiction in a manner prescribed by law. He contended that the Court becomes functus officio the moment the official order disposing of a case is signed and an order cannot be altered except to the extent of correcting a clerical or arithmetical error. The learned Public prosecutor pointed out that the practice of filing miscellaneous petitions after the disposal of the main case and issuance of fresh directions in subsequent petition by this Court cannot be referable to any statutory provision and is, in fact, abuse of the process of the Court. Both, learned counsel for the non-petitioner and learned Public Prosecutor argued that now again the petitioner cannot be permitted to challenge the FIR which was earlier challenged in the previous petition filed by him under Section 482, Cr.P.C. According to them, of course, if challan is filed against the petitioner then he can raise his objections at the time of framing of the charge and, upon trial Court framing the charge, obviously the petitioner is at lawful liberty to impugn the order framing charge before this Court invoking revisionary jurisdiction of this Court under Sections 397 and 401 of the Code.

It is also contended that as per the previous order passed in the earlier petition filed by the petitioner under Section 482, Cr.P.C. the Public Prosecutor nowhere stated that the investigating agency is filing FR. He submitted that only this much

was brought to the notice of the Court that in the investigation carried out by SHO Jaswant Singh he proposed to submit negative final report nor this Court ordered that the proposed FR shall be filed in the Court and in the order only the submission of the Public Prosecutor was incorporated. It is further contended that the petitioner is accepting part of the investigation conducted by SHO Jaswant Singh but does not accept the investigation made by Sub-Inspector Chhel Singh. As per the learned counsel for the non-petitioner according to the verdict of the Supreme Court in Bhajan Lal's case, reported in (1992) 1 Suppl S.C.C.335, it has been held that from perusal of the FIR if case is made out then the Court should not interfere in the investigation. It is contended that otherwise also interference in the investigation is not permissible under the law. The learned Public Prosecutor further pointed out that there is no ground in the petition for which interference is warranted and the only ground that earlier petition was disposed of by this Court on the presumption that FR would be given by the investigation agency cannot now be urged by the petitioner because the petitioner knew well that investigation was going on and the Public Prosecutor only submitted that in the initial investigation made by SHO Jaswant Singh he proposed to give negative final report and, in fact, FR was not filed in the matter and the investigation has further been conducted by Sub Inspector Chhel Singh. It is

argued that the investigating officer cannot be compelled to file FR and complete and thorough investigation is a right vested in the investigating agency. It is also argued that even if the complainant represented before the IGP for further investigation, it cannot be said to be wielding influence inasmuch as a citizen is within his right to demand thorough investigation and if the investigating agency is satisfied that the matter requires further investigation, such further investigation cannot be scuttled by an order of the Court. In support of their submission learned counsel for the non-petitioner and learned Public Prosecutor placed reliance upon the judgments reported in AIR 2001 S.C. 43, Hari Singh Mann Vs. Harbhajan Singh Bajwa, AIR 1974 S.C. 1146, State of Orissa Vs. Saroj Kumar Sahu and prayed that this petition deserves to be dismissed as there is no ground for interference.

I have heard learned counsel for the parties and perused the record of the case.

As per ground No.1 of the petitioner, it is admitted position of the case that FIR under challenge in this petition was earlier challenged by way of Section 482 petition which was registered as S.B. Criminal Misc. Petition No.431/2004. It is also admitted position of the case that the said petition was disposed of vide order dated 17.03.2005 and, at the time of disposing of the petition, it was observed that the Public Prosecutor has received the case diary

and, on the basis of the case diary, submits that the matter was first investigated by Sub Inspector Chhel Singh and, on completion of the investigation, concluded that the offence is not made out in the matter against the petitioner and, therefore, proposed to submit final report. As per ground No.1 of the petition, it is only informed to the Court by the Public Prosecutor and, on that basis only, the Court observed that there is no necessity to go into the controversy whether the FIR discloses a cognizable offence or not.

It is true that while observing the aforesaid facts, the matter was disposed of but it is nowhere ordered to restrain the investigating agency from further investigation. So also, according to settled principles of law, the investigating agency has jurisdiction to investigate a matter thoroughly before filing the FR. Likewise, as per the provisions of the Code of Criminal Procedure even if FR is filed before the Court, the matter can be sent back for re-investigation. During the course of investigation, a particular investigating officer gives its finding that no offence is made out, however, it does not preclude the investigating agency from re-investigating the matter till filing a final conclusion of the investigation. It is well within the jurisdiction and domain of the investigating agency to investigate the matter thoroughly and after informing the Court in earlier petition, the matter

was further investigated then, it cannot be said that any illegality is committed by the investigating agency.

In the earlier order passed in the previous petition filed by the petitioner, this Court has not restrained the investigating agency from conducting further investigation and, as per the facts narrated in the petition, after passing of the aforesaid order in the previous petition filed under Section 482, Cr.P.C., the complainant filed an application before the I.G.P. and brought to his notice that the matter is not properly investigated and, upon that representation by the complainant, decision was taken for further investigation. Unless malafides is explicitly and specifically pointed out, this Court does not find any occasion for interference if the investigating agency, upon consideration of the representation filed by the complainant, directed further investigation. If such decision of the investigating agency were to be interfered with, there will be no thorough investigation and, in the absence of specific malafides pointed out explicitly before the Court, in no circumstance, this Court would proceed to shut down any investigation.

It is not available to the petitioner now before the Court that in the earlier petition in which he impugned the same FIR before this Court it was informed to the Court that the investigating agency has proposed to submit FR, therefore, the FIR may be

quashed. He is, of course, within his rights to raise his objection before the trial Court in the event of filing of challan; but, before that, he cannot be permitted to file petition again praying for quashing the same FIR which is sought to be investigated by the police. It is also significant to mention here that after the first investigation in which Sub Inspector Chhel Singh proposed about no offence being made out, but the same was not re-investigated by the S.H.O. Jaswant Singh, then the petitioner cannot object that the complainant P.K. Chhaparwal is an influential Chartered Accountant and he represented his case before the I.G.P., Udaipur and, with connivance with the police officials, the matter was investigated further. The whole purpose of the provisions of the Code of Criminal Procedure with regard to investigation is to find out whether there is evidence of the commission of of fence, and for that purpose, a citizen has right to file objections before the investigating agency. There is no illegality in further investigation. The petitioner himself has not disputed the investigation, meaning thereby, he also perceives within his bosom that the FIR requires regular investigation.

It may also be mentioned that in such a case the primary test is upon perusal of the FIR on the face value of the allegations contained therein if offence is made out, regular investigation must be made and it is also open to the petitioner to cooperate with the

investigation and submit his objections, if he has any, for consideration by the investigating officer. It is expected of the investigating agency to consider the documents or evidence, if any, produced before it by either party. It is also expected of the investigating agency to complete the investigation expeditiously and in fair manner. Having considered all the facts and circumstances of the case, in my considered opinion, no interference is warranted.

The petition is dismissed.

(Gopal Krishan Vyas) J.

Ojha, a.

List the following for pronouncement of Order :

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Mr. Ashok Upadhyay, P.P. for the State.
Mr. Sandeep Mehta for the non-petitioners.

By Order,

(Court Master)